IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A.No.56 of 2001

Reserved on 3.12.2007

Date of decision 7.12.2007

State of H.P. Appellant

Versus

Jai Singh Respondent

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the appellant: Ms. Meenakshi Sharma,
Deputy Advocate General.

For the respondent: Mr.Romesh Verma, Advocate.

Rajiv Sharma,J.

The respondent was accused in Criminal Case No.12-2 of 1999 and he was prosecuted under Sections 324 and 323 of the Indian Penal Code. in the court of Judicial Magistrate Ist. Class, Court No.5, Shimla and was acquitted on 4.10.2000. The State has filed the present appeal against the acquittal of the respondent.

The brief facts of the prosecution story are that on 20.8.1998 the complainant and his wife Smt.Nirmu Devi were in the room and at about 7 p.m. The accused Jai Singh called the complainant to come out of the house. The accused started abusing and assaulted him on his left arm with the drat. The complainant's wife raised hue and cry and the accused assaulted the complainant again which resulted causing injuries on his right hand thumb and left hand thumb. Consequently, the FIR was registered and the matter was investigated.

---

[1] Whether reporter of local papers is allowed to see the judgment? No.

The prosecution had produced eight witnesses to prove the charge against the accused. The accused had been examined under Section 313 Cr.P.C. The trial court acquitted the accused on 4.10.2000.

The learned Deputy Advocate General had strenuously argued that the prosecution has proved the charge against the accused. He then contended that the trial court has not correctly appreciated the evidence led by the prosecution which has resulted in grave miscarriage of justice. Mr. Romesh Verma, learned counsel appearing for the respondent had supported the judgment of the trial court dated 4.10.2000.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

PW-1 Bala Ram complainant has stated that the accused assaulted him with the drat resulting in causing injuries on his hand. The incident is dated 20.8.1998. But the FIR was registered on 22.8.1998. There is no explanation why the FIR was registered after three days. PW-2 Tilak Raj was declared hostile. PW-3 Beli Ram has deposed that in the year 1998 he was Panch with the Gram Panchayat and on 20.8.1998 and complainant had told him that accused had assaulted him with drat. PW-4 is Vidya Devi who has deposed that she knew the complainant and Smt. Nirmu Devi. She was declared hostile. PW-5 Lachhi Ram had admitted that quarrel did not take place in his presence. PW-6 Smt.Nirmu Devi is the wife of the complainant. She admitted that it was pitch dark on 20.8.1998. She had stated that the occurrence was also seen by PW-5. PW-5 in his cross-examination admitted that quarrel had not taken place in his presence. PW-7 is Dr. Rakesh Kumar, who had examined the complainant. According to him the injuries mentioned in the MLC Ex.PW7/B are simple, though according to him injuries No.1 and 2 were caused with sharp blunt weapon and the duration of injuries was 48 hours.

In nutshell what emerges from the evidence led by the prosecution is that PW 2 and PW 4 were declared hostile and PW-5 was not present at the spot on 20.8.1998. PW-3 has stated that drat had been produced by

the wife of the complainant. PW-6 had stated that Ex.PW1/A was not read over to her and she had stated that the drat was given by her husband to the police in Police Station. There are material contradictions and discrepancies in the statements of the witnesses produced by the prosecution and moreover two of the witnesses have been declared hostile.

Consequently, the prosecution has failed to prove its case against the accused person. There is neither any misreading nor mis-appreciation of the evidence led before the trial court. The judgment passed by the trial court calls for no interference. The appeal is accordingly dismissed. The bonds furnished by the respondent are discharged.

December 7, 2007(g) **(Rajiv Sharma), J.**